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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86308556
Applicant	RIIP, Inc.
Applied for Mark	INTELLIGENT RACK
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Submission	Appeal Brief
Attachments	229441052_v 1_TTAB Appeal Brief - INTELLIGENT RACK.pdf(132289 bytes) 229451018_v 1_Exhibits A and B - INTELLIGENT RACK - Appeal Brief.pdf(2497246 bytes)
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Date	12/14/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: RIIP, Inc.
Mark: INTELLIGENT RACK
Serial No.: 86/308,556
Class: 009
Filed: June 12, 2014
Law Office: 102

Examining Attorney: Maria-Victoria Suarez

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPEAL BRIEF UNDER 37 C.F.R. § 2.142

I. INTRODUCTION

Applicant seeks registration of the above-identified mark INTELLIGENT RACK for use in connection with “computer hardware; computer hardware adapted to be installed on racks; electronic controllers for computer systems; electronic controllers for computer systems adapted to be installed on racks; electronic sensors, namely, electronic environmental sensors for temperature, humidity and other environmental information; electronic positioning tags; asset management systems comprising computer hardware and software for data centers; infrastructure management systems comprising computer hardware and software for data centers; electrical power management systems comprising power distribution units for computer data centers; power electronics for datacenters, namely, power distribution units (PDUs); and KVM switches,” in International Class 009. On April 15, 2015, the Examining Attorney issued a final Office

Action refusing registration of the present application under Trademark Act § 2(e)(1), 15 U.S.C. § 1052(e)(1) on the ground that the mark is merely descriptive.

II. ISSUE PRESENTED

The issue presented in this appeal is whether Applicant's INTELLIGENT RACK mark is merely descriptive of Applicant's goods.

III. THE EXAMINING ATTORNEY'S REFUSAL TO REGISTER

The Examining Attorney has refused registration of Applicant's mark INTELLIGENT RACK for "Computer hardware; computer hardware adapted to be installed on racks; electronic controllers for computer systems; electronic controllers for computer systems adapted to be installed on racks; electronic sensors, namely, electronic environmental sensors for temperature, humidity and other environmental information; electronic positioning tags; asset management systems comprising computer hardware and software for data centers; infrastructure management systems comprising computer hardware and software for data centers; electrical power management systems comprising power distribution units for computer data centers; power electronics for datacenters, namely, power distribution units (PDUs); and KVM switches" under Trademark Act § 2(e)(1), 15 U.S.C. § 1052(e)(1) on the ground that the mark is merely descriptive of Applicant's goods. For the reasons set forth below, Applicant respectfully submits that Applicant's INTELLIGENT RACK mark is not merely descriptive, and, therefore requests that the Board reverse the Examining Attorney's Section 2(e)(1) refusal to register Applicant's mark.

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<u>Concurrent Technologies, Inc. v. Concurrent Technology Corp.</u> , 12 U.S.P.Q.2d 1054, 1057 (TTAB 1989)	7
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V. ARGUMENTS

In the Office Action, the Examining Attorney has refused registration of Applicant's INTELLIGENT RACK mark ("Applicant's Mark") on the Principal Register on the ground that when the mark is used on or in connection with Applicant's goods, the mark merely describes the goods. More particularly, the Examining Attorney stated that the mark INTELLIGENT RACK is commonly used in the industry to refer to computer components used for real-time monitoring of power distribution units (PDUs). The Examiner also stated previously that the term "intelligent" is defined as "guided or controlled by a computer; especially: using a built-in microprocessor for automatic operation, for processing of data, or for achieving greater versatility," while the term "rack" is defined as "a framework, stand, or grating on or in which articles are placed." The Examining Attorney then stated that, in the context of computers, the term "rack" refers to "a frame or cabinet for mounting computer components." Thus, the Examining Attorney stated that the INTELLIGENT RACK mark would be perceived by consumers as describing "a frame or cabinet for mounting computer components containing [a] built-in microprocessor for automatic operation, for processing of data, or for achieving greater versatility." For the following reasons, Applicant respectfully submits that its INTELLIGENT RACK mark is not merely descriptive and that the Examining Attorney has not met her burden of showing by clear evidence that Applicant's mark is primarily merely descriptive.

A mark is merely descriptive if it "immediately conveys" the qualities or characteristics of the goods with which it is used. However, if the mark is susceptible to multiple connotations, or requires some thought, imagination or perception in order for the relevant public to perceive any significance of the mark as it relates to a significant aspect of the goods, then the mark is suggestive. Moreover, if the proposed mark has more than one dictionary definition and there is

at least one meaning which would be suggestive, then the mark is not merely descriptive. In re Jim Crockett Promotions, Inc., 5 U.S.P.Q.2d 1455 (TTAB 1987). Thus, when the issue of whether a mark is merely descriptive or suggestive is not clear, the question must be resolved in favor of the applicant. In re Gourmet Bakers, Inc., 173 U.S.P.Q. 565 (TTAB 1972).

Here, Applicant's INTELLIGENT RACK mark does not immediately convey the qualities or characteristics of the goods used in connection therewith. Rather, the mark is, at worst, suggestive, such that it is susceptible to multiple connotations and requires some thought and cogitation by relevant consumers in order for them to perceive any significance of the INTELLIGENT RACK mark as it relates to a significant aspect of Applicant's goods.

For instance, Applicant's goods are not a "rack" as defined by the Examining Attorney, namely, "a frame or cabinet for mounting computer components." Applicant's goods are not frames or cabinets, and do not perform any mounting function ascribed by the Examining Attorney. Rather, Applicant's goods are computer hardware and equipment such as power distribution units. See Exhibit A – Applicant's website showing the goods. Therefore, the INTELLIGENT RACK mark is not merely descriptive of Applicant's goods.

Moreover, the term INTELLIGENT RACK is susceptible to other connotations that render the mark suggestive. For instance, the dictionary relied upon by the Examining Attorney provides other pertinent definitions for the term "intelligent," namely:

Adjective

- having or showing the ability to easily learn or understand things or to deal with new or difficult situations : having or showing a lot of intelligence
- able to learn and understand things
- having an ability to deal with problems or situations that resembles or suggests the ability of an intelligent person

and

- 1 *a* : having or indicating a high or satisfactory degree of [intelligence](#) and mental capacity
 b : revealing or reflecting good judgment or sound thought : [skillful](#)
- 2 *a* : possessing intelligence
 b : guided or directed by [intellect](#) : [rational](#)

See Exhibit B. <http://www.merriam-webster.com/dictionary/intelligent>.

In view of the foregoing, the mark INTELLIGENT RACK has a suggestive connotation. That is, Applicant's goods would be perceived to possess a characteristic of a high degree of human "intelligence" or sentience that would resemble or suggest the ability of an intelligent person. Such a connotation would most certainly require some thought, imagination or perception by the relevant public in order to perceive any significance of the INTELLIGENT RACK mark as it relates to an aspect of Applicant's goods. As a result, the mark INTELLIGENT RACK has a suggestive meaning more likely to be conveyed to the purchasing public than the one ascribed to it by the Examining Attorney. Therefore, Applicant's mark is suggestive and not merely descriptive.

Assuming *arguendo* that Applicant's INTELLIGENT RACK mark can be ascribed the meaning presented by the Examining Attorney, Applicant has clearly shown that the mark can be characterized as a "double entendre" capable of more than one interpretation. That is, Applicant's INTELLIGENT RACK mark can have a double connotation or significance as applied to its products. A mark that comprises a "double entendre" will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods. TMEP §1213.05(c); See, also, In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968) (SUGAR & SPICE for bakery products held to be registerable); In re

Delaware Punch Co., 186 USPQ 63 (TTAB 1975) (THE SOFT PUNCH for noncarbonated soft drink held to be registerable). As clearly shown herein, Applicant's INTELLIGENT RACK mark can have a suggestive meaning ascribed to it in relation to Applicant's goods. Therefore, even if the Examining Attorney's meaning of the INTELLIGENT RACK mark is applicable, the fact that one of the meanings of Applicant's mark is not merely descriptive (but, rather, is suggestive) does not render the mark primarily merely descriptive; and, therefore, the mark must not be refused registration.

In addition, the fact that Applicant's INTELLIGENT RACK mark consists of two ordinary words does not necessarily mean that the mark is merely descriptive. When joined in a single mark, descriptive terms can create a distinct commercial impression which is not merely descriptive. In re TBG, Inc., 229 U.S.P.Q. 759 (TTAB 1986) (SHOWROOM ONLINE held not merely descriptive of computerized interior furnishings product information services); In re Shutts, 217 U.S.P.Q. 363 (TTAB 1983) (SNO-RAKE held not merely descriptive of snow removal hand tools). Thus, a mark must be looked at as a whole to determine descriptiveness rather than dissecting it into individual elements. Concurrent Technologies, Inc. v. Concurrent Technologies Corp., 12 U.S.P.Q.2d 1054, 1057 (TTAB 1989).

Here, the Examining Attorney has incorrectly dissected Applicant's INTELLIGENT RACK mark into two individual elements and analyzed each of these elements separately, rather than analyzing the mark as a whole, to determine descriptiveness. In looking at the INTELLIGENT RACK mark as a whole, the mere combination of the elements "INTELLIGENT" and "RACK" creates a distinct commercial impression that does not convey the exact nature of the goods. While the mark is composed of ordinary words, each word has multiple meanings. Thus, the combination of the terms "INTELLIGENT" and "RACK" renders

Applicant's mark unique or incongruous, since the combination of these terms does not result in a designation that has a plain and readily understood meaning for any goods. In re Disc Jockeys, Inc., 23 U.S.P.Q.2d 1715, 1716 (TTAB 1992). For these reasons, Applicant's INTELLIGENT RACK mark is not merely descriptive of its goods.

In sum, Applicant's INTELLIGENT RACK mark is suggestive and not merely descriptive of Applicant's goods. Furthermore, the Examining Attorney has not met her burden of showing by clear evidence that Applicant's INTELLIGENT RACK mark is primarily merely descriptive. Accordingly, Applicant respectfully requests that its INTELLIGENT RACK mark be published for opposition for registration on the Principal Register.

VI. CONCLUSION

For the foregoing reasons, Applicant requests that the Board reverse the Examining Attorney's refusal to register Applicant's Mark on the Principal Register pursuant to Section 2(e)(1) of the Trademark Act and approve Applicant's Mark for publication.

Dated: December 13, 2015

Respectfully submitted,

RIIP, Inc.

Applicant

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EXHIBIT A



PX Intelligent Rack PDUs

[Home \(http://www.raritan.com/\)](http://www.raritan.com/) » [Products \(http://www.raritan.com/products\)](http://www.raritan.com/products) » [Power Distribution](#) » [Rack Power Distribution](#) » [PX Intelligent Rack PDUs](#)



Rack Power Distribution Units (PDUs)

The PX series boasts the most reliable and sophisticated rack PDUs on the market. It offers metering at the inlet, outlet, and PDU circuit breaker level. And tracks current, voltage, power, power factor, and energy usage within 1% billing-grade accuracy. In short, it helps you to better manage existing power capacity, and save energy.

But the PX series offers more than reliable power distribution and metering. It also supports sensors that ensure your equipment is operating in a safe environment. And remote outlet switching to ensure proper provisioning and avoid tripped circuit breakers. Or reboot hung servers. All without stepping foot in the data center.

We offer hundreds of models that meet all your needs. Whether you have a small, medium, or large data center; densely packed 400V three-phase racks; high power blade servers; or a lights-out colo deployment -- there's a PX just for you. See more reasons to consider the PX below.

Learn More About
PX Intelligent Rack PDUs

[Data Sheet](#)

[Product Selector](#)

[PDU eBook](#)

[Online Demo](#)

[Request a Quote](#)

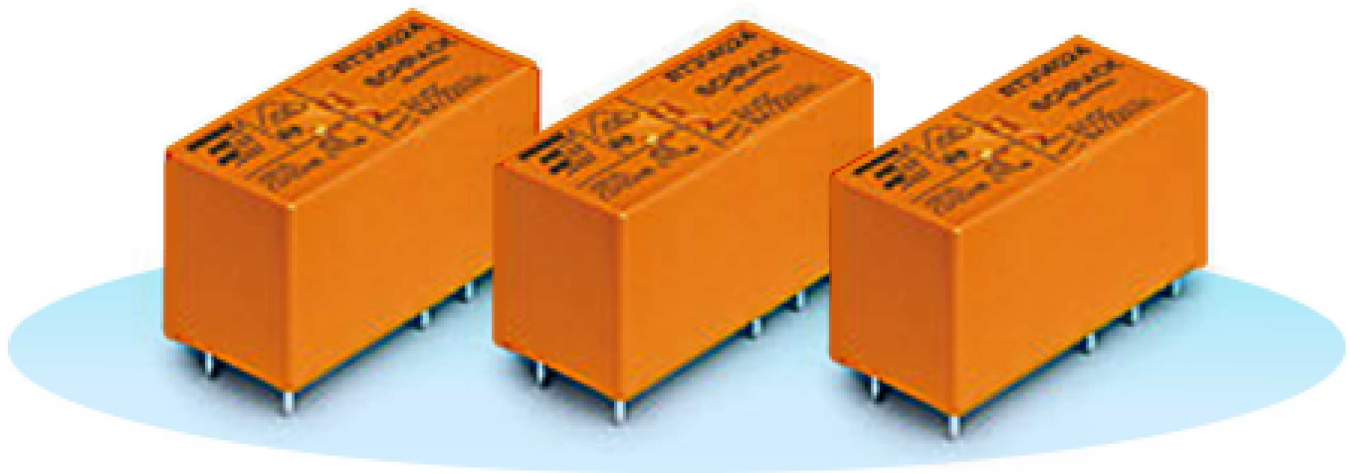
Ready to Ship Models



More Great Product Features

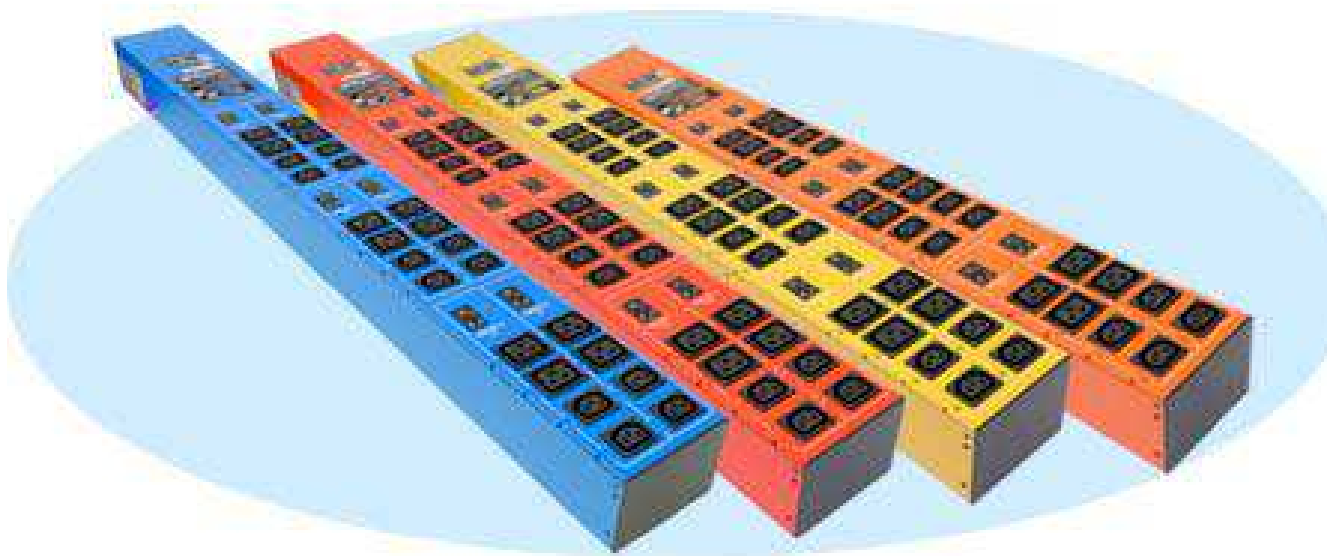
- PDU Metering at the Inlet, Outlet, and Branch Circuits
- Intelligent PDUs for Remote Power Management
- PDU Remote Power Control
- USB Configuration for Intelligent PDUs

Features



Energy Efficient Latching Relays

Consume 67% less energy, produce less heat, and can be configured to return to pre-outage state instantly. Available on PX-5000 series models.



See Power Feeds in Color

Full color rack PDUs ([/color-pdu-ebook](#)) are available in ten colors. Color lowers the risk of human error and makes it easier to identify power feeds, and perform troubleshooting, to minimize downtime.

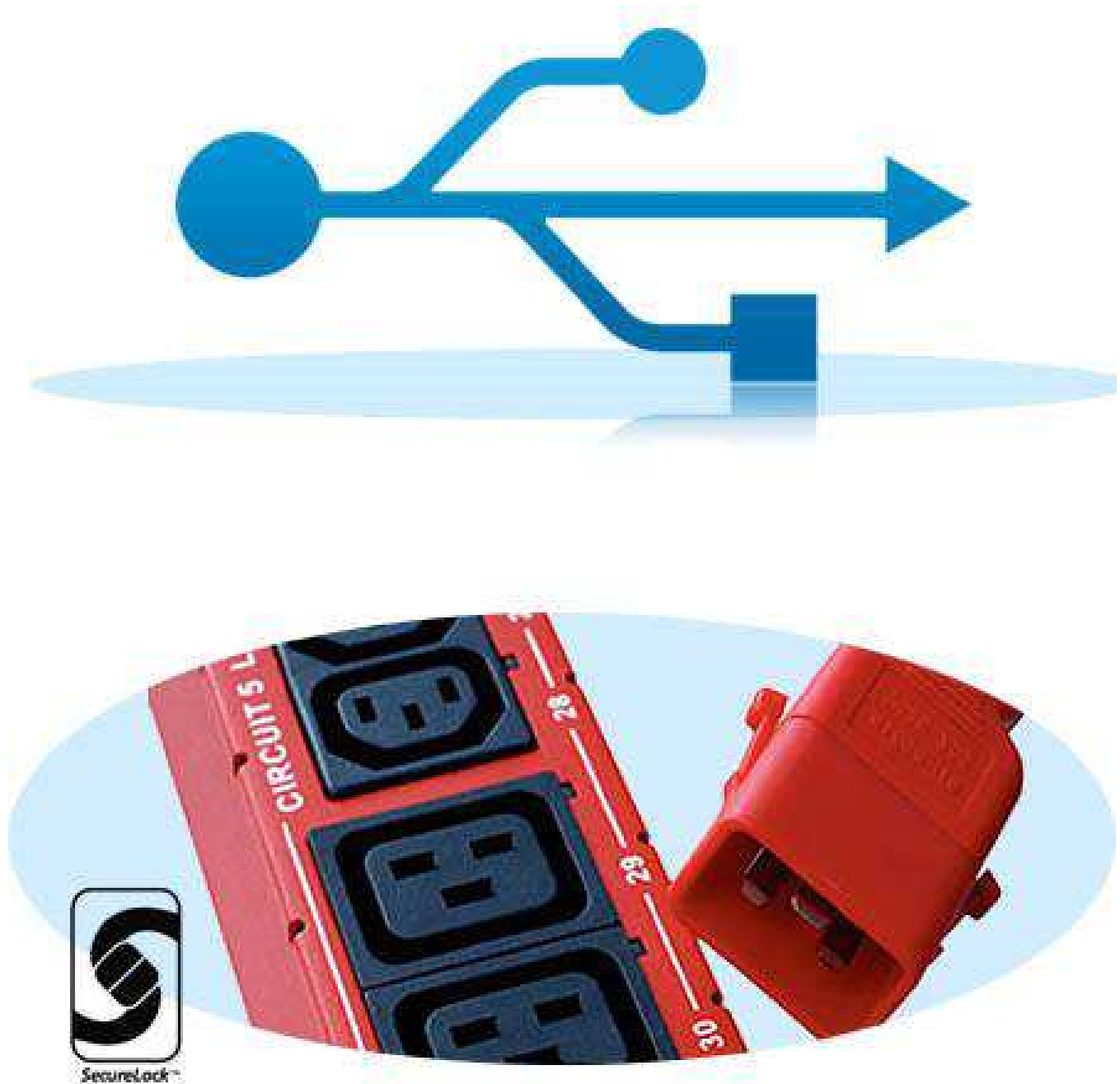


Billing-Grade Accuracy

Accurate kWh metering allows you to measure actual energy usage for customer or department charge-back billing, establishing baselines, and analyzing the effect of initiatives.

Five Features, One Port

The PX series comes equipped with USB ports to support Wi-Fi networking, PDU to PDU cascading, webcams, quick setup (<http://www.raritan.com/blog/detail/how-to-rapidly-configure-intelligent-rack-pdus>), and at-the-rack display.



Cords Stay In, Servers Stay Up

Ensure that IEC power cords don't accidentally come unplugged from servers when technicians are working on racks with [SecureLock](http://www.raritan.com/products/accessories/securelock-power-cords) ([/products/accessories/securelock-power-cords](http://www.raritan.com/products/accessories/securelock-power-cords)).

Optimize Your Environment



Optional plug-and-play [environment sensors](/products/environmental-monitoring/environment-sensors) allow you to monitor temperature, humidity, airflow, and other environmental conditions.

Additional Features

Accurate Rack Metering

Check power on PDUs, lines, circuit breakers, and individual outlets to make informed [capacity planning](/products/dcim-software/dctrack) decisions. Billing grade accuracy within 1% lets you use resources efficiently.

High Power, High Heat

Several 400V three-phase high power models supporting up to 55kW per rack PDU. Plus 140°F threshold for high-heat environments such as hot aisle containment and blade racks.

Circuit Breaker Monitoring

Monitor voltage and current of breakers within the PDU to understand status (open or closed) and real-time loads. Improve uptime and capacity planning.

Field-Replaceable Controller

Flush-mount controller with intuitive push buttons, industrial-grade reliability, configurable firmware, and hot-swap capability. Available on PX 3 models.

Receive Advanced Alerts

Receive alerts via SNMP, email, and syslog when predefined thresholds are crossed for both power and environmental events. Prevent downtime.

High-Res Color Display

Highest resolution color display in the industry at 220 x 176. LCD display changes orientation automatically so you can easily check power readings.

Compact iPDU Design

A precise, compact design makes the PX line ideal for racks that are already at full capacity. Up to 36% smaller than competitors' iPDUs.

Secure and Encrypted

Directory services support advanced authorization options, including: LDAP/S, RADIUS and Active Directory®. 256-bit AES encryption and strong passwords.

Sampling and Buffering

Choose the frequency at which you monitor power and the amount of data to gather to see real-time power capacity and trends over time.

Terminal Block Accessible

Dramatically reduce your CAPEX spend on your next data center buildout! Safely wire the PDU [terminal block](http://ram.raritanassets.com/resources/briefs/Terminal-Block-V1214.pdf) (<http://ram.raritanassets.com/resources/briefs/Terminal-Block-V1214.pdf>) directly to an existing power whip or conduit.

Easy Power Cord Dressing

Special V2 three-phase models with sequenced line pairs of outlets simplify load balancing and dramatically improve power cord dressing & airflow.

Hundred of Models

The PX series boasts more than 600 models with electrical configurations to meet every data center requirement you have today and into the future.

Four Intelligent Rack PDU Families

	Switching	Outlet Metering	Inlet Metering	Circuit Breaker Metering
PX-1000			●	●
PX-2000	●		●	●
PX-4000		●	●	●
PX-5000	●	●	●	●

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[Contact Sales \(/landing/request-a-quote\)](#)

Online Demo

Take a self-guided test drive of one of our iPDUs.

[Test Drive \(/resources/test-drives/detail/px-intelligent-power-distribution-units\)](#)

Have a Question?

Contact a product specialist to learn more about Raritan iPDUs.

[Contact Us \(/landing/contact-us\)](#)

EXHIBIT B

We're working on a new site. Click here to get a sneak preview.

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intelligent



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Ask big questions.



COLLEGE OF THE
Holy Cross
Ask More.



Games



Word of the Day



Video



Blog: Words at Play



My Faves

Dictionary

intelligent

SAVE POPULARITY



adjective | in-tel·li-gent | \in-'te-lə-jənt\

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: having or showing the ability to easily learn or understand things or to deal with new or difficult situations : having or showing a lot of intelligence

: able to learn and understand things

: having an ability to deal with problems or situations that resembles or suggests the ability of an intelligent person

How "Spam" became something on
your phone and not on your plate. »

Full Definition of INTELLIGENT

- 1 **a** : having or indicating a high or satisfactory degree of *intelligence* and mental capacity
b : revealing or reflecting good judgment or sound thought : *SKILLFUL*
- 2 **a** : possessing intelligence
b : guided or directed by *intellect* : *RATIONAL*
- 3 **a** : guided or controlled by a computer; *especially* : using a built-in microprocessor for automatic operation, for processing of data, or for achieving greater versatility — compare *DUMB* 7
b : able to produce printed material from digital signals <an *intelligent* copier>

— in-tel·li-gen-tial | \-,te-lə-'jen(t)-shəl | adjective

— in-tel·li-gent-ly | \-'te-lə-jənt-lē | adverb

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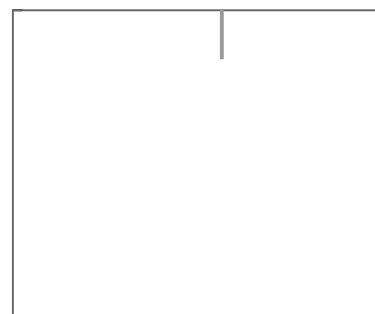
fulminate

to complain loudly or angrily

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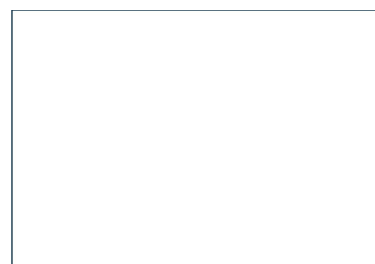
Words at Play



Microaggression: Words
We're Watching



Crash Blossom: Words
We're Watching



Word Games

Take a 3-minute break and test your skills!

Examples of INTELLIGENT

She asked some *intelligent* questions.

He's a hard worker but he's not very *intelligent*.

Ask The Editor Videos



Lay vs. Lie

'Try and' vs. 'Try to'

Origin of INTELLIGENT

Latin *intelligent-*, *intelligens*, present participle of *intelligere*, *intellegere* to understand, from *inter-* + *legere* to gather, select — more at [LEGEND](#)

First Known Use: 1509

Related to INTELLIGENT

Synonyms

alert, brainy, bright, brilliant, clever, exceptional, fast, hyperintelligent, keen, nimble, quick, quick-witted, sharp, sharp-witted, smart, supersmart, ultrasmart

Antonyms

airheaded, birdbrained, boneheaded, brain-dead, brainless, bubbleheaded, chuckleheaded, dense, dim, dim-witted, doltish, dopey (*also* dopy), dorky [*slang*], dull, dumb, dunderheaded, empty-headed, fatuous, gormless [*chiefly British*], half-witted, knuckleheaded, lamebrain (*or* lamebrained), lunkheaded, mindless, obtuse, opaque, pinheaded, senseless, simple, slow, slow-witted, soft, softheaded, stupid, thick, thickheaded, thick-witted, unbrilliant, unintelligent, unsmart, vacuous, weak-minded, witless

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Synonym Discussion of INTELLIGENT

INTELLIGENT, **CLEVER**, **ALERT**, **QUICK-WITTED** mean mentally keen or quick. **INTELLIGENT** stresses success in coping with new situations and solving problems <an *intelligent* person could assemble it fast>. **CLEVER** implies native ability or aptness and sometimes suggests a lack of more substantial qualities <*clever* with words>. **ALERT** stresses quickness in perceiving and understanding <*alert* to new technology>. **QUICK-WITTED** implies promptness in finding answers in debate or in devising expedients in moments of danger or challenge <no match for his *quick-witted* opponent>.

INTELLIGENT Defined for Kids

intelligent

adjective | in-tel-li-jent | in-'te-lə-jəntl

Definition of INTELLIGENT for Kids

1 : having or showing serious thought and good judgment <an *intelligent* student> <an *intelligent* decision>

2 : able to learn and understand <Is there *intelligent* life on other planets?>

— in-tel-li-jent-ly | adverb

Name That Thing



True or False?



Spell It



Trend Watch



Radicalize

What do the San Bernardino shooters and Donald Trump have in common? ...

Synonym Discussion of INTELLIGENT

INTELLIGENT, **CLEVER**, and **BRILLIANT** mean having a good amount of mental ability. **INTELLIGENT** is used of a person who can handle new situations and solve problems. <We need an *intelligent* person to run the company.> **CLEVER** is used of a person who learns very quickly. <The *clever* youngster learned the trick in a few minutes.> **BRILLIANT** is used of a person whose mental ability is much greater than normal. <A *brilliant* doctor discovered the cure for that disease.>

Learn More About INTELLIGENT

Thesaurus: [All synonyms and antonyms for "intelligent"](#)

Spanish Central: [Spanish translation of "intelligent"](#)

Nglish: [Translation of "intelligent" for Spanish speakers](#)

Britannica English: [Translation of "intelligent" for Arabic speakers](#)

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**Dilnessa Ed** · Teacher at Sunny Side Educational Institute

Intelligence is simply the ability to analyse all information and make sense of it and come to the best possible solution to everything. Artificial intelligence is simply the ability of robots to imitate natural intelligence and which robots that can fly like a cockroach can hardly imitate the cockroach they try to be, let alone human intelligence. Basically, we can dump the idea of artificial intelligence, keep to robots, how much ever sophisticated they may be. Human intelligence is something else, baby! And it is not digital, but continuous.

[Like](#) · [Reply](#) · Oct 29, 2015 9:04am**David Crosbie**

I was attempting to discern the intrinsic distinguishing characteristic of humans from mankind's machines and animals. Intellect seems obvious until we get to M-W sense 3 of intelligent; which struggles for the well established term "artificial intelligence" meaning man-made as opposed to God created intelligence or natural human intelligence. Reference to "devices possessing artificial intelligence" would be much more accurate (and time independent) than the present words which might be construed as a chain printer of the late 1950s. The point of artificial intelligence is that it become i... [See More](#)

[Like](#) · [Reply](#) · Sep 1, 2014 4:33pm**Marett Andhrea Dagum**

I'm looking up the differences (or similarities) of the usage and meaning of the words intelligent, clever, wise, witty, smart, brilliant, etc.

[Like](#) · [Reply](#) · Jul 30, 2014 8:12am**Bashir Lawan** · Works at FCT Health Services Scheme-FHSS

Please, when do you refer to someone as being "too intelligent"

[Like](#) · [Reply](#) · Mar 21, 2014 4:05am**Chaima Arfaoui**[Like](#) · [Reply](#) · Dec 3, 2013 9:35am[Load 7 more comments](#)

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